

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District <u>Western District of Missouri</u>	
Name (under which you were convicted): <u>James Phillip Edwards</u>		Docket or Case No.: <u>4:09-cr-00329-DW-1</u>	
Place of Confinement: <u>United States Penitentiary Tucson</u>		Prisoner No.: <u>21874-045</u>	
UNITED STATES OF AMERICA		Movant (include name under which you were convicted) <u>James Phillip Edwards</u>	
v.			

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:  
U.S. District Court Western District of Missouri (Kansas City)  
400 East Ninth Street Room 1510  
Kansas City MO 64106
- (b) Criminal docket or case number (if you know): 4:09-cr-00329-DW-1
2. (a) Date of the judgment of conviction (if you know): March 16, 2011
- (b) Date of sentencing: November 6, 2012
3. Length of sentence: 245 years
4. Nature of crime (all counts):
 

<u>Sexual Exploitation of Children 15, 35-65, 85, 105, 125, 145-195</u>	<u>14 counts</u>
<u>Sexual Exploitation of Minors 205-215</u>	<u>2 counts</u>
<u>Controlled Substance-Sell, Distribute or Dispense 25, 75, 95, 115, 135</u>	<u>5 counts</u>
5. (a) What was your plea? (Check one)
 

(1) Not guilty ☐
(2) Guilty ☐
(3) Nolo contendere (no contest) ☒

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

N.A.
6. If you went to trial, what kind of trial did you have? (Check one)
 

Jury ☐
Judge only ☐

N.A.

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒
8. Did you appeal from the judgment of conviction? Yes ☐ No ☒
9. If you did appeal, answer the following:

- (a) Name of court: N.A.
- (b) Docket or case number (if you know): N.A.
- (c) Result: N.A.
- (d) Date of result (if you know): N.A.
- (e) Citation to the case (if you know): N.A.
- (f) Grounds raised:

N.A.

- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒ NA

If "Yes," answer the following:

- (1) Docket or case number (if you know):
- (2) Result: N.A.
- (3) Date of result (if you know): N.A.
- (4) Citation to the case (if you know): N.A.
- (5) Grounds raised:

N.A.

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: NA
- (2) Docket or case number (if you know): NA
- (3) Date of filing (if you know):

N.A.

(4) Nature of the proceeding: **NA**

(5) Grounds raised:

**N.A.**

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐ **NA**

(7) Result: **NA**

(8) Date of result (if you know): **NA**

(b) If you filed any second motion, petition, or application, give the same information: **NA**

(1) Name of court: **NA**

(2) Docket or case number (if you know): **NA**

(3) Date of filing (if you know): **NA**

(4) Nature of the proceeding: **NA**

(5) Grounds raised:

**N.A.**

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐ **NA**

(7) Result: **NA**

(8) Date of result (if you know): **NA**

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐ **NA**

(2) Second petition: Yes ☐ No ☐ **NA**

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

NA

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

~~NA~~

GROUND ONE:

Mr. Edwards was denied effective assistance of counsel.

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See attachment, "Ground One", "Supporting Facts"

(b) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐ NA

- (2) If you did not raise this issue in your direct appeal, explain why: NA

(c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

- (2) If your answer to Question (c)(1) is "Yes," state: NA

Type of motion or petition: NA

Name and location of the court where the motion or petition was filed: NA

12(a).

GROUND ONE:

Mr. Edwards was denied effective assistance of counsel.

SUPPORTING FACTS:

The constitutional violation being alleged by Mr. Edwards in Ground Two of this § 2255 Petition was not previously raised, prior to his conviction or on appeal, due to the incorrect legal advice of his court-appointed trial counsel. Upon being told by Mr. Edwards that the statutes which he was accused of violating were unconstitutional, trial counsel inexplicably told him that, "the judge can't overturn the law." On another occasion, Mr. Edwards attempted to discuss challenging the constitutionality of the statutes; and again, trial counsel provided him with erroneous advice by stating - "That's not a defense." As a result, no motion to dismiss based on a failure to charge an offense was filed. Furthermore, Mr. Edwards elected not to challenge the constitutionality of the statutes he was convicted of on appeal because he was operating according to the faulty legal advice from trial counsel that he could not challenge the constitutionality of a law.

Trial counsel's legal advice was clearly erroneous. Mr. Edwards was entitled to the effective assistance of counsel guaranteed to him by the Sixth Amendment of the United States Constitution. Such a guarantee surely includes being appointed an attorney who is familiar with the Federal Rules

of Criminal Procedure, specifically Rule 12. Therefore, Mr. Edwards' failure to raise the constitutional violation in Ground 2 does not procedurally bar him from raising it now.

Docket or case number (if you know): NA

Date of the court's decision: NA

Result (attach a copy of the court's opinion or order, if available):

N.A.

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐ NA

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐ NA

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐ NA

(6) If your answer to Question (c)(4) is "Yes," state: NA

Name and location of the court where the appeal was filed: NA

Docket or case number (if you know): NA

Date of the court's decision: NA

Result (attach a copy of the court's opinion or order, if available):

N.A.

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N.A.

GROUND TWO: See attachment, "Ground Two".

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See attachment, "Ground Two", "Supporting Facts"

GROUND TWO:

Mr. Edwards' convictions under Title 18, U.S.C. § 2251(a) and (d), Title 18, U.S.C. § 2252 (a)(2) and (a)(4), and Title 21, U.S.C. § 841 (a)(1) and (b)(7) violated the Due Process Clause of the Fifth Amendment because the laws arbitrarily restrict the fundamental right of Freedom of Action.

SUPPORTING FACTS:

Nature is the Supreme Law of the Universe and remains the foundation on which the United States Constitution was constructed. The Founding Fathers recognized that there are certain unalienable human rights that must be secured. Illustrative of this point is the Ninth Amendment to the Constitution which acknowledges the existence of other, unenumerated rights retained by the people. Since the Constitution was written, the Supreme Court has identified several, specific areas of personal liberty which the government may not enter, e.g. marriage, procreation, consensual sexual relations, child rearing, family relationships, education, et cetera... Freedom of Action is also protected by the Fifth Amendment to the Constitution, which states in pertinent part: "No Person shall be...deprived of life, liberty, or property without due process of law." Due process is a living principle and may be invoked by American citizens in search of greater freedom. Mr. Edwards argues that the laws he was convicted of arbitrarily deprived him of his Freedom of Action, which is a violation of the Fifth Amendment.



Although not specifically enumerated in the Constitution, acting on one's will is self-evident. In society, however, ordered liberty demands restraint. Since people naturally want to be safe from harm, Americans are only free to engage in non-harmful activity. In deed, the only non-arbitrary, and therefore legitimate governmental interest justifying a deprivation of an individual's Freedom of Action is to ensure the safety of the citizenry. Thus, any law that places restrictions on Freedom of Action, while lacking an essential element requiring the government to prove that a defendant harmed or endangered another person, is unconstitutional. Title 18, U.S.C. § 2251(a) and (d), Title 18, U.S.C. § 2252 (a)(2) and (a)(4), and Title 21, U.S.C. § 841 (a)(1) and (b)(7) do not contain such an essential element, so Mr. Edwards' convictions must be reversed.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐ NA

(2) If you did not raise this issue in your direct appeal, explain why:

N.A.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state: NA

Type of motion or petition: NA

Name and location of the court where the motion or petition was filed: NA

Docket or case number (if you know):

Date of the court's decision: NA

Result (attach a copy of the court's opinion or order, if available):

N.A.

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐ NA

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐ NA

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐ NA

(6) If your answer to Question (c)(4) is "Yes," state: NA

Name and location of the court where the appeal was filed:

N.A.

Docket or case number (if you know): NA

Date of the court's decision: NA

Result (attach a copy of the court's opinion or order, if available):

N.A.

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N.A.

**GROUND THREE:**

N.A.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

N.A.

**(b) Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐ N.A.

(2) If you did not raise this issue in your direct appeal, explain why:

N.A.

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state: N.A.

Type of motion or petition: N.A.

Name and location of the court where the motion or petition was filed:

N.A.

Docket or case number (if you know): N.A.

Date of the court's decision:

N.A.

Result (attach a copy of the court's opinion or order, if available): **NA**

(3) Did you receive a hearing on your motion, petition, or application? **NA**

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application? **NA**

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal? **NA**

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state: **NA**

Name and location of the court where the appeal was filed: **NA**

Docket or case number (if you know): **NA**

Date of the court's decision: **NA**

Result (attach a copy of the court's opinion or order, if available):

**N.A.**

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

**N.A.**

**GROUND FOUR:**

**N.A.**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

**N.A.**

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue? **NA**

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

**N.A.**

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application? **NA**

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state: **NA**

Type of motion or petition: **NA**

Name and location of the court where the motion or petition was filed:

**N.A.**

Docket or case number (if you know): **NA**

Date of the court's decision: **NA**

Result (attach a copy of the court's opinion or order, if available):

**N.A.**

(3) Did you receive a hearing on your motion, petition, or application? **NA**

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application? **NA**

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal? **NA**

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state: **NA**

Name and location of the court where the appeal was filed:

**N.A.**

Docket or case number (if you know): **NA**

Date of the court's decision: **NA**

Result (attach a copy of the court's opinion or order, if available):

**N.A.**

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N. A.

13. Is there any ground in this motion that you have not previously presented in some federal court?

If so, which ground or grounds have not been presented, and state your reasons for not

presenting them: Grounds one; two ~~and three~~.

My attorney gave me wrong legal advice, that, "the judge cannot strike down the law," which is ground one. I did not know this was untrue until I came to USPTucson. Grounds two ~~and three~~ <sup>is a</sup> constitutional issues which I did not file because of my belief from my attorney, that the judge cannot strike down the law.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court

for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

N. A.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Travis Poindexter  
818 Grand Avenue Suite 300  
Kansas City MO 64106

(b) At arraignment and plea: Travis Poindexter  
818 Grand Avenue Suite 300  
Kansas City MO 64106

(c) At trial:

N. A.

(d) At sentencing: Travis Poindexter  
818 Grand Avenue Suite 300  
Kansas City MO 64106

(e) On appeal:

N.A.

(f) In any post-conviction proceeding:

N.A.

(g) On appeal from any ruling against you in a post-conviction proceeding:

N.A.

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

N.A.

(b) Give the date the other sentence was imposed: NA

(c) Give the length of the other sentence: NA

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

N.A.

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.\*

N.A.

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\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.



Therefore, movant asks that the Court grant the following relief:

Overturn, nullify, set aside or rescind the verdict and release me from prison confinement.

or any other relief to which movant may be entitled.

NA

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on October 30, 2013 (month, date, year).

Executed (signed) on 30 Oct 13 (date).

Frederic P. Edler

Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

James Edwards 21874-045  
United States Penitentiary Tucson  
P.O. Box 24550  
Tucson AZ 85734

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2010 NOV -4 PM 2:52

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7012 1640 0001 1765 2546



⇌21874-045⇌

Charles Evans Whittaker  
United States Courthouse  
400 E 9TH ST  
Room 1510  
Kansas CITY, MO 64106  
United States



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2013 NOV -4 PM 1:12

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10-31-13 A06:01 OUT

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Date: \_\_\_\_\_

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